

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GREGORY HUGHES,

Plaintiff,

vs.

BANK OF AMERICA CORP. et al.,

Defendants.

3:12-cv-00513-RCJ-VPC

ORDER

This is a residential foreclosure avoidance case involving one property. Several motions are pending before the Court.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff Gregory Hughes gave lender Bank of America, N.A. (“BOA”) a promissory note for \$385,000 secured by a first deed of trust (“FDOT”) against real property at 2995 Shady Creek Ct., Reno, NV 89523 (the “Property”). (*See* FDOT 1–3, Dec. 15, 2005, ECF No. 48-1). Plaintiff later gave BOA a second deed of trust (“SDOT”) against the Property to secure a home equity line of credit with a credit limit of \$49,375. (*See* SDOT 1–3, Aug. 24, 2007, ECF No. 48-2). PRLAP, Inc. was the trustee on both deeds of trust, and Mortgage Electronic Registration Systems, Inc. (“MERS”) was party to neither of them. (*See* FDOT 2; SDOT 2). BOA substituted Recontrust Co., N.A. (“Recontrust”) as trustee on the FDOT. (*See* Substitution, Jan. 27, 2010, ECF No. 48-3). The same day, First American Title Insurance Co. (“First American”),

1 purporting to be Recontrust's agent, filed the first notice of default ("FNOD") against the
2 Property, but Recontrust later rescinded it. (See FNOD, Jan. 27, 2010, ECF No. 48-4; Rescission,
3 Apr. 22, 2010, ECF No. 48-5). BOA then assigned the FNOD and any notes it secured to BAC
4 Home Loans Servicing, LP ("BAC"). (See Assignment, Jan. 5, 2011, ECF No. 48-6). The same
5 day, BAC, GP, purporting to be BAC's general partner, then substituted Recontrust as trustee on
6 the FDOT. (See Substitution, Jan. 5, 2011, ECF No. 48-7).¹ The same day, First American, again
7 purporting to be Recontrust's agent, then filed the second notice of default ("SNOD") against the
8 Property. (See SNOD, Jan. 5, 2011, ECF No. 48-8). The State of Nevada Foreclosure Mediation
9 Program issued its certificate permitting foreclosure to proceed, because the program did not
10 apply to the Property. (See Certificate, June 20, 2011, ECF No. 48-9). Recontrust noticed a
11 trustee's sale on the Property for August 3, 2011. (See Notice of Sale, July 11, 2011, ECF No.
12 48-10). The public records also indicate that the City of Reno filed at least three liens against the
13 property for unpaid sewer service bills over the last three years, and that Recontrust sold the
14 Property at a trustee's sale to the Federal national Mortgage Association ("Fannie Mae") for
15 \$371, 238.48 on February 27, 2012.

16 On June 9, 2011, Plaintiff, represented by counsel, sued BOA, BAC, Recontrust, PRLAP,
17 First American, and Charlotte Olmos in state court based upon the foreclosure, and Defendants
18 removed to this Court. (See Case No. 3:11-cv-617). Finding the foreclosure to have been proper,
19 the Court granted Defendants' motion to dismiss and to expunge the lis pendens. Plaintiff did
20 not appeal.

21 Plaintiff then sued Bank of America Corp. ("BOA Corp."), BOA, BAC, Recontrust,
22 Fannie Mae, the Washoe County Recorder's Office (the "Recorder"), and Kathy Burke *in pro se*

23 ¹Because BOA had already substituted Recontrust as the trustee at a time when BOA was
24 the beneficiary, the later "substitution" of Recontrust was superfluous, and the Court therefore
25 need not examine whether BAC, GP in fact had the proper agency to substitute the trustee on
behalf of BAC.

1 in state court on thirteen nominal causes of action²: (1) Real Estate Settlement Procedures Act
2 (“RESPA”) violations; (2) Breach of Contract (failure to comply with HUD regulations before
3 foreclosure, as required by the deed of trust); (3) “Unreasonable Collection Efforts”; (4)
4 Intentional Misrepresentation (accepting payments but not applying them to Plaintiff’s account);
5 (5) Fair Debt Collection Practices Act (“FDCPA”) violations; (6) violations of the “FTC
6 Safeguards Rule,” 67 Fed. Reg. 36484; (7) Racketeer and Corrupt Organizations Act (“RICO”)
7 violations; (8) Abuse of Process; (9) Intentional Misrepresentation (falsely claiming ownership of
8 the promissory note); (10) “Bad Faith Bargaining”; (11) False Pretenses; (12) “Filing a False
9 Certificate (Robosigning)”; and (13) Intentional Infliction of Emotional Distress (“IIED”).
10 Defendants removed. The Court denied a motion to remand and dismissed all claims except the
11 first (RESPA), sixth (FTC Safeguards Rule), seventh (RICO), and thirteenth (IIED) as precluded
12 as against BOA, BAC, and Recontrust. The Court also granted Defendant Kathryn Burke’s
13 motion to dismiss filed in state court when Plaintiff failed to respond thereto after having been
14 given a *Klingele* notice. All parties but the Recorder moved to dismiss. The Court granted that
15 motion and ordered Plaintiff to show cause within fourteen days why the claims should not be
16 dismissed as against the Recorder, as well.

17 Plaintiff did not show cause within fourteen days and has not attempted to show cause for
18 several months. Rather, Plaintiff filed a motion for permission to appeal, two motions to stay
19 pending appeal, and a notice of appeal. The Court of Appeals dismissed the appeal for lack of
20 jurisdiction. The Court denies the motion for permission to appeal, which it interprets as a
21 motion under either Rule 54(b) or 28 U.S.C. § 1292(b). The Court will not certify for appeal
22 under either of those provisions, because the Court finally adjudicates the remainder of the case
23 via the present Order. The Court of Appeals will now have jurisdiction over the entire case

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25 ²The causes of action are listed as 1–7 and 9–14. (*See generally* Compl., July 30, 2012, ECF No. 1-1, at 5).

1 under § 1291. Nor will the Court grant sanctions against defendants for failure to make initial
2 disclosures under Rule 26(a). Plaintiff filed the motion for sanctions on January 6, 2014. The
3 Scheduling Order had issued one month earlier, and discovery was to be open for six months.
4 All Defendants except the Recorder were dismissed on January 10, 2014, and Defendants are not
5 expected to engage in discovery while a motion to dismiss is pending. Finally, the Recorder had
6 only been joined via the Amended Complaint filed four days before the sanctions motion.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that the Motion for Sanctions (ECF No. 62) is DENIED.

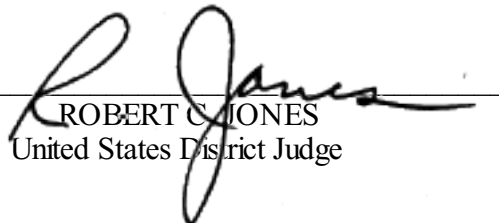
9 IT IS FURTHER ORDERED that the Motion for Permission to Appeal (ECF No. 67) and
10 the Motions for Stay (ECF Nos. 68, 74) are DENIED as moot.

11 IT IS FURTHER ORDERED that the Motion to Waive Fees for Appeal (ECF No. 69) is
12 DENIED for lack of jurisdiction. Plaintiff must address motions on appeal to the Court of
13 Appeals.

14 IT IS FURTHER ORDERED that the remaining parties are DISMISSED, and the Clerk
15 shall enter judgment and close the case.

16 IT IS SO ORDERED.

17 Dated this 16th day of June, 2014.

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19 ROBERT C. JONES
United States District Judge
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